

Message Text

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12

ACTION EB-11

INFO OCT-01 ARA-16 IO-14 ISO-00 OMB-01 TAR-02 SP-03 SWF-02

AGR-20 AID-20 CIAE-00 COME-00 INR-10 LAB-06 NSAE-00

OIC-04 RSC-01 SIL-01 STR-08 CIEP-02 CEA-02 SSO-00

INRE-00 L-03 AF-10 EA-11 EUR-25 NEA-14 DRC-01 /188 W

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O R 140308Z JUN 74

FM AMEMBASSY MEXICO

TO SECSTATE WASHDC IMMEDIATE 2144

US TREASURY DEPT WASHDC

INFO USMISSION USUN NEW YORK

USMISSION GENEVA

LIMITED OFFICIAL USE SECTION 1 OF 2 MEXICO 4936

E.O. 11652: N/A

TAGS: EGEN, UNCTAD

SUBJECT: UNCTAD CHARTER OF ECONOMIC RIGHTS AND DUTIES

TREASURY PASS BRADFIELD

REFS: A) MEXICO 4884 B) STATE 125022

1. SUMMARY. WORKING GROUP TOOK SEVERAL LARGE STEPS BACKWARD JUNE 13. LANGUAGE EARLIER AGREED UPON IN PREVIOUS SESSIONS WAS REOPENED BY LDCS, AND ALGERIA'S CONSTRUCTIVE PROPOSAL ON MNC'S WAS WITHDRAWN. HOWEVER, RANGE OF POSSIBLE SOLUTIONS ON NATIONALIZATION WAS USEFULLY DEVELOPED IN INFORMAL NEGOTIATIONS LED BY CASTENEDA. MOREOVER, FORMUL-

ATION ON STRUCTURAL CHANGE WAS AGREED UPON.

2. NATIONALIZATION. U.K., CANADA, RUMANIA AND CHINA MET WITH CASTANEDA AND WORKED UP FOLLOWING RANGE OF FORMULATIONS OF PERMANENT SOVEREIGNTY PROPOSALS. ATTEMPT WAS SIMPLY TO LAY OUT POSSIBILITIES, WITH NO COMMITMENTS ENTAILED.

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PASSAGES IN PARENTHESES APPEAR IN CIRCULATED TEXT IN

BRACKETS, AND ARE IN SPECIAL DISAGREEMENT.

3. PARA 2 OF CHARTER. THE FIRST SENTENCE WOULD READ: QUOTE
EVERY STATE HAS (FULL) PERMANENT SOVEREIGNTY OVER ITS WEALTH AND
NATURAL RESOURCES, AND ACCORDINGLY HAS THE INALIENABLE RIGHT(WITHIN
THE FRAMEWORK OF INTERNATIONAL LAW) FREELY AND FULLY(AND EFFECT-
IVELY) TO DISPOSE OF THEM. UNQUOTE

4. SECOND SENTENCE OF PARA 2 OF CHARTER. ALTERNATIVE 1 FOLLOWS,
DIVIDED INTO ALTERNATIVES A AND B: QUOTE

ALTERNATIVE 1

"THIS RIGHT INCLUDES THE RIGHT TO NATIONALIZATION OR TRANSFER OF
OWNERSHIP TO ITS NATIONALS AS AN EXPRESSION OF ITS FULL PERMANENT
SOVEREIGNTY."

ALTERNATIVE A

"(EVERY STATE TAKING SUCH MEASURES HAS THE DUTY TO PAY (JUST)
(APPROPRIATE) COMPENSATION TO THE OWNER IN ACCORDANCE WITH:

A) ALL APPLICABLE LAW.

OR

B) RELEVANT LAW.

OR

C) LAW.)"

ALTERNATIVE B

"(EVERY STATE TAKING SUCH MEASURES HAS THE DUTY TO PAY (JUST)
(APPROPRIATE) COMPENSATION TO THE OWNER IN ACCORDANCE WITH THE
DOMESTIC LAW OF THE STATE TAKING SUCH MEASURES AND

A) RELEVANT INTERNATIONAL OBLIGATIONS.

OR

B) GENERALLY RECOGNIZED AND ACCEPTED INTERNATIONAL PRINCIPLES AND
NORMS.

OR

C) (INTERNATIONAL) LAW AS DEVELOPED FROM TIME TO TIME BY THE INTER-
NATIONAL COMMUNITY.)

IN ANY CASE WHERE THE QUESTION OF COMPENSATION GIVES RISE TO A CONTRO-

VERSY, THE NATIONAL JURISDICTION OF THE STATE TAKING SUCH MEASURES
MUST BE EXHAUSTED." UNQUOTE

5. ALTERNATIVE 2 TO SECOND SENTENCE OF PARA 2 OF CHARTER PROVIDES:

QUOTE

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ALTERNATIVE 2

"THIS RIGHT INCLUDES THE RIGHT TO NATIONALIZATION OR TRANSFER OF
OWNERSHIP TO ITS NATIONALS AS AN EXPRESSION OF ITS FULL PERMANENT
SOVEREIGNTY. THE EXERCISE OF THIS RIGHT, INCLUDING THE PAYMENT OF
(JUST) (APPROPRIATE) COMPENSATION TO THE OWNER SHALL BE IN ACCORDANCE
WITH...(THE SAME ALTERNATIVES A AND B AS IN ALTERNATIVE 1.)"

UNQUOTE THERE FOLLOWS A REPEAT OF "IN ANY CASE WHERE..."ETC. OF
ALTERNATIVE 1 ABOVE.

6. THIRD SENTENCE OF PARA 2 OF CHARTER: QUOTE

ALTERNATIVE 1

"HOWEVER, UPON AGREEMENT BY SOVEREIGN STATES (OR OTHER PARTIES CONCERNED), SETTLEMENT OF THE DISPUTE, (WHERE APPROPRIATE, MAY) (SHOULD) BE MADE THROUGH ARBITRATION OR INTERNATIONAL ADJUDICATION."

ALTERNATIVE 2

"HOWEVER, SETTLEMENT OF THE DISPUTE SHALL BE MADE BY PEACEFUL MEANS, IN ACCORDANCE WITH THE UN CHARTER, UPON AGREEMENT BY CONCERNED STATES, ON THE BASIS OF SOVEREIGN EQUALITY AND IN ACCORDANCE WITH THE PRINCIPLE OF FREE CHOICE OF MEANS." UNQUOTE

7. THE DRAFTING GROUP ALSO PREPARED THE FOLLOWING RANGE OF SUPPLEMENTAL FORMULATIONS: QUOTE

SOME POSSIBLE GENERAL CLAUSES HAVING A RELATIONSHIP TO PARAGRAPH 2

NO STATE MAY USE OR ENCOURAGE THE USE OF ECONOMIC, POLITICAL OR ANY OTHER TYPE OF MEASURE TO COERCE ANOTHER STATE IN ORDER TO OBTAIN FROM IT THE SUBORDINATION OF THE EXERCISE OF ITS SOVEREIGN RIGHTS AND TO SECURE FROM IT ADVANTAGES OF ANY KIND.

A) ALL STATES HAVE THE DUTY TO CONTRIBUTE TO THE BALANCED EXPANSION OF THE WORLD ECONOMY, TAKING DULY INTO ACCOUNT THE CLOSE INTERRELATIONSHIP BETWEEN THE WELL BEING OF THE DEVELOPED COUNTRIES AND THE GROWTH AND DEVELOPMENT OF THE DEVELOPING COUNTRIES AND THAT THE PROSPERITY OF THE INTERNATIONAL COMMUNITY AS A WHOLE DEPENDS UPON THE PROSPERITY OF ITS CONSTITUENT PARTS.

B) ALL STATES HAVE THE DUTY TO CONDUCT THEIR MUTUAL ECONOMIC RELATIONS ON THE BASIS OF THE COMMON INTEREST OF ALL STATES, TAKING DUTY INTO ACCOUNT THE REQUIREMENTS AND INTERDEPENDENCE OF THE ECONOMIES OF ALL STATES, AND THE NECESSITY TO CONTRIBUTE TO THE BALANCED EXPANSION OF THE WORLD ECONOMY.

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STATES SHOULD RESPECT (TREATIES AND CONTRACTS) (AGREEMENTS) FREELY ENTERED INTO BY THEM IN THE EXERCISE OF THEIR SOVEREIGNTY.

OR

ALL STATES HAVE THE DUTY TO FULFILL IN GOOD FAITH THE OBLIGATIONS ARISING OUT OF (FOREIGN INVESTMENT) AGREEMENTS FREELY ENTERED INTO BY OR BETWEEN THEM IN THE EXERCISE OF THEIR SOVEREIGNTY.

OR

EVERY STATE HAS THE DUTY TO FULFILL IN GOOD FAITH THE OBLIGATIONS FREELY ASSUMED BY IT IN THE EXERCISE OF ITS SOVEREIGNTY AND VALID UNDER GENERALLY RECOGNIZED PRINCIPLES AND RULES OF INTERNATIONAL LAW.

IN THEIR INTERPRETATION AND APPLICATION, THE ABOVE PROVISIONS ARE INTERRELATED AND EACH PROVISION SHOULD BE CONSTRUED IN THE CONTEXT OF THE OTHER PROVISIONS.

UNQUOTE

8. COMMENT: OF ALTERNATIVE APPROACHES PROPOSED IN PARAS 4 AND 5 OF THIS MESSAGE, WE GREATLY PREFER PARA 5, SINCE IT SUBJECTS NATIONALIZATION, AND NOT MERELY MATTER OF COMPENSATION, TO A STANDARD THAT IS EXTERNAL TO LAW OF NATIONALIZING STATE. NATURALLY ALTERNATIVE A OF BOTH TEXTS CONTAINED IN PARAS 4 AND 5 OF THIS MESSAGE IS NOT ACCEPTABLE. WE BELIEVE THAT ALTERNATIVE B, WHEN TIES TO TEXT CONTAINED PARA 5 OF THIS MESSAGE, IS ACCEPTABLE. OF THE SUBPARAGRAPHS CONTAINING ALTERNATIVES ON THE GOVERNING LAW, WE PREFER "A. RELEVANT INTERNATIONAL OBLIGATIONS". WE DO NOT LIKE PHRASE

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"AND ACCEPTED" IN SUBPARA B, THOUGH AS A LAST RESORT WE BELIEVE WE COULD LIVE WITH THIS FORMULATION. SAME APPLIES TO ALTERNATIVE C, PROVIDED THAT IT READS: "INTERNATIONAL LAW".

9. CASTANEDA HAS INDICATED THAT HE WOULD BE PREPARED TO AGREE ON "RELEVANT INTERNATIONAL OBLIGATIONS, IF ANY", AN ADDITION WE HAVE DECLINED.

10. INSTRUCTION REQUESTED: REQUEST AUTHORITY TO ACCEPT TEXT CON-

TAINED PARA 5 THIS MESSAGE(I.E., ALTERNATIVE 2), PROVIDED THAT ANY OF THE GOVERNING LAW PROVISIONS OF ALTERNATIVE B DESCRIBED IN PARA 8 OF THIS MESSAGE ARE INCLUDED. WE NATURALLY WOULD PRESS HARD TO CARRY "JUST" INSTEAD OF "APPROPRIATE" BUT WOULD APPRECIATE DISCRETION ON THIS POINT.

11. MULTINATIONALS. NEGOTIATIONS ON PARA 11 TOOK BAD BUT PREDICT-
ABLE TURN WHEN ALGERIA WITHDREW ITS DRAFT ON EQUITABLE AND EQUAL
TREATMENT OF MNCS. GROUP OF 77 TOOK HARD LINE THAT
(A) ONLY THE INITIAL "REGULATION" SENTENCE COULD STAND
(B) MULTINATIONALS COULD NOT BE PLACED ON THE SAME PLANE
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AS HOST COUNTRIES, SO THAT HOST COUNTRIES HAD RIGHTS AND DUTIES
TOWARD THEM

(C) KEY TASK WAS TO REMEDY EXISTING IMBALANCES AS INTER-
NATIONAL ECONOMY, AND NOT TO WORK OUT A BALANCE OF RIGHTS AND
DUTIES IN THIS CHARTER. USDEL DEPLORED WITHDRAWAL OF ALGERIAN TEXT
AND VIGOROUSLY MAINTAINED THAT PARA 11 WOULD HAVE TO EXPRESS
BALANCE OF RIGHTS AND DUTIES, OR IT COULD AGREE TO NO PARA AT ALL
ON MNCS. GROUP OF 77 PRESSED FOR A FRESH U.S. DRAFT, WHILE
REFUSING TO COME UP WITH THEIR OWN DRAFT, OR TO TREAT THE CANADIAN
PROPOSAL AS A BASIS OF NEGOTIATION. DEBATE WAS UNUSUALLY SHARP AND
IMPASSE IS SOLID.

12. WE DO NOT THINK THAT THE IMPASSE WILL WILL SOON BE BROKEN.
NEVERTHELESS,

IT MAY BE TACTICALLY USEFUL FOR USDEL TO BE ABLE TO MEET WIDE-
SPREAD REQUEST FOR FURTHER PROPOSAL ON OUR PART. ACCORDINGLY IF WE
JUDGE IT MAKES SENSE, WE WILL BE PREPARED TO PROPOSE FOLLOWING,
WHICH WE REGARD AS WITHIN SCOPE OF OUR INSTRUCTIONS AND POSITIONS
ENUNCIATED BY SECRETARY KISSINGER AT TLATELOLCO. IF DEPT HAS ANY
DOUBTS, SEND IMMEDIATE INSTRUCTIONS.

QUOTE EVERY STATE HAS THE RIGHT TO REGULATE AND SUPERVISE
TRANSNATIONAL CORPORATIONS OPERATING WITHIN ITS NATIONAL JURIS-
DICTION BY TAKING MEASURES TO ENSURE THAT SUCH CORPORATIONS COMPLY
FULLY AND FREELY WITH ITS LAWS, RULES AND REGULATIONS. IN EXERCISING
THAT RIGHT, EVERY STATE SHALL TREAT TRANSNATIONAL CORPORATIONS
EQUITABLY AND EQUALLY, AVOIDING ARBITRARY AND DISCRIMINATORY ACTIONS,
AND OTHERWISE OBSERVING APPLICABLE INTERNATIONAL OBLIGATIONS.
TRANSNATIONAL CORPORATIONS SHALL RESPECT THE SOVEREIGNTY AND LAWS
OF THE COUNTRIES IN WHICH THEY OPERATE, REFRAINING FROM ANY INTER-
VENTION IN THEIR INTERNAL AFFAIRS.

QUOTE STATES SHOULD COOPERATE IN THE EXCHANGE OF PERYI-
NENT PUBLISHED INFORMATION, ACCORDING TO AGREED CRITERIA. UNQUOTE

13. DEVELOPMENT ASSISTANCE. GROUP MADE NO PROGRESS ON EITHER PARA
13 OR 15. JAMAICAN PROPOSAL (PARA 14 REFTTEL A) APPEARS TO BE GENER-
ALLY ACCEPTABLE AS FAR AS PHRASE "SOVEREIGN EQUALITY OF STATES
(US DEL STATED WE STILL STUDYING TEXT). HOWEVER DEADLOCK PERSISTS

OVER LAST CLAUSE, FOR WHICH THERE ARE NOW SIX ALTERNATIVES: (1) "AND FREE OF ANY POLITICAL OR MILITARY CONDITIONS", WHICH STILL STRONGLY SUPPORTED BY CHINA, INDIA AND PAKISTAN, WITH MEXICO, GROUP D AND AFRICANS EXPRESSING PREFERENCE FOR IT; (2) "AND FREE OF ANY LIMITED OFFICIAL USE

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POLITICAL, ECONOMIC AND ANY OTHER CONDITIONS", ADVANCED BY PAKISTAN BUT NOT SUPPORTED BY OTHERS; (3) "AND FREE OF ANY CONDITIONS IMPINGING UPON THEIR SOVEREIGNTY", THE MEXICAN COMPROMISE WORDING, WHICH IS ACCEPTABLE TO ALL EXCEPT CHINA, INDIA AND PAKISTAN, AND WHICH US HAS NOT YET ENDORSED ALTHOUGH WE SUGGESTED THAT "IMPINGING" BE CHANGED TO "INFRINGING" AND DELETION OF "THEIR" BEFORE "SOVEREIGNTY"; (4) "ON MUTUALLY ACCEPTABLE TERMS AND CONDITIONS", THE CHAIRMAN'S PROPOSAL WHICH ENDORSED BY US, EC-9 AND JAPAN, ALTHOUGH EC-9 AND JAPAN ALSO ACCEPTED ALTERNATIVE 3 ABOVE; (5) "AND FREE OF ANY CONDITIONS IMPOSED AGAINST THEIR WILL", A SECOND PROPOSAL BY CHAIRMAN TO WHICH THERE HAS BEEN NO REACTION AS YET; AND (6) "AND CONSISTENT WITH THE OTHER PRINCIPLES ENUNCIATED IN CHAPTER I OF THIS CHARTER", WHICH US DEL INTRODUCED AFTER HEARING CHAIRMAN'S UNHELPFUL SECOND PROPOSAL.

14. GROUP DEADLOCKED ON PARA 15. INDIA AND PAKISTAN ARE ATTEMPTING UNDO AGREEMENTS REACHED AT 3RD MEETING OF WG ON FIRST SENTENCE OF ALTERNATIVE 4, BY PROPOSING REPLACEMENT OF "PROMOTE" BY "PROVIDE" AND "FROM COUNTRIES WITH THE CAPACITY TO PROVIDE SUCH RESOURCES" BY "DEVELOPED COUNTRIES". US DEL AND EC-9 VOICED STRONG CRITICISM OF THIS ATTEMPT TO MOVE BACKWARD. PROBLEMS REGARDING "NET" AND "REAL" ALSO UNRESOLVED. JAPAN, CANADA AND US AGREED ACCEPT PROPOSAL EC-9 TEXT TO REPLACE EXISTING SECOND AND THIRD SENTENCES (PARA 16, REFTEL A) AS BASIS FOR DISCUSSION. SO FAR, 77 SEEM IN NO MOOD TO NEGOTIATE LAST TWO SENTENCES SERIOUSLY AND HAVE HARDENED THEIR POSITION AGAINST INSERTING REFERENCE TO "OTHER COUNTRIES WITH THE CAPACITY TO PROVIDE RESOURCES", CLAIMING THAT INTERNATIONAL DEVELOPMENT STRATEGY IMPOSED OBLIGATIONS TO PROVIDE DEVELOPMENT ASSISTANCE ONLY ON DEVELOPED COUNTRIES AND PROBLEM OF ODA FROM NON-DC DONORS COVERED BY REFERENCE TO "OTHERS" IN FIRST SENTENCE. US DEL AND EC-9 FIRMLY UNITED IN INSISTING ON REFERENCE TO "OTHER COUNTRIES" IN BOTH RELEVANT SENTENCES.

15. MFN AND NON-DISCRIMINATION. NO PROGRESS MADE IN RESOLVING FUNDAMENTAL SUBSTANTIVE DIFFERENCES BETWEEN GROUP D AND EC-9. GROUP D REP EMPLOYED PROCEDURAL DELAYS TO HAMPER WORK OF NEGOTIATING GROUP.

16. NEGOTIATING GROUP ON STRUCTURAL CHANGE AGREED ON FOLLOWING TEXTS: PARA 5, CHAP II: QUOTE: STATES SHOULD CO-OPERATE IN FACILITATING MORE RATIONAL AND EQUITABLE INTERNATIONAL ECONOMIC RELATIONS AND IN ENCOURAGING STRUCTURAL CHANGES IN THE CONTEXT OF A BALANCED LIMITED OFFICIAL USE

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WORLD ECONOMY IN HARMONY WITH THE NEEDS AND INTERESTS OF ALL COUNTRIES, ESPECIALLY DEVELOPING COUNTRIES, AND SHOULD TAKE APPROPRIATE MEASURES TO THIS END. UNQUOTE
PREAMBLE IV(A): QUOTE: THE ACHIEVEMENT OF MORE RATIONAL AND EQUITABLE INTERNATIONAL ECONOMIC RELATIONS AND THE ENCOURAGEMENT OF STRUCTURAL CHANGES IN THE WORLD ECONOMY; UNQUOTE
SUBSTITUTION OF WORDS "ECONOMIC RELATIONS" FOR "DIVISION OF LABOR" IN BOTH TEXTS WAS AGREED TO MEET ADAMANT CHINESE OBJECTION TO LATTER PHRASE REPORTED PREVIOUSLY.

17. LDCS ARE REPEATEDLY MAINTAINING THAT THEY CANNOT AGREE TO RETREAT FROM TERMS OF RESOLUTIONS ON THE ESTABLISHMENT OF NEW INTERNATIONAL ECONOMIC ORDER ADOPTED, THEY CLAIM, BY CONSENSUS BY SIXTH SPECIAL SESSION UNGA. THE PREJUDICE TO USG AND WESTERN POSITION BY FAILURE TO VOTE AGAINST THESE RESOLUTIONS IS DAILY MANIFESTED, THOUGH WE NATURALLY MAKE THE MOST OF USG'S AND OTHERS STATED RESERVATIONS.

18. BRAZILIAN DELEGATES HAVE INDICATED THEIR BELIEF THAT THERE IS "NO CHANCE" THAT AGREED TEXT OF CHARTER COULD BE COMPLETED BY JUNE 28.

CHILEAN DELEGATE TOLD US DEL THAT MEXICANS GROWING INCREASINGLY CONCERNED OVER LACK OF FORWARD MOVEMENT IN NEGOTIATING GROUPS AND WERE CONSIDERING POSSIBILITY OF PROPOSING ADDITIONAL WORKING SESSION AT LATER DATE BUT NOT PRIOR TO MEETING OF NEXT UNGA.

19. MEXICAN PRESS AND TV CONTINUE GIVING HEAVY AND SO FAR ACCURATE CONVERGENCE TO US VIEWS ON CHARTER.
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Message Attributes

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